

## Department of Energy

## § 824.6

other entity which enters into an agreement with DOE.

[70 FR 3607, Jan. 26, 2005, as amended at 70 FR 8716, Feb. 23, 2005]

### § 824.3 Definitions.

As used in this part:

*Act* means the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*).

*Administrator* means the Administrator of the National Nuclear Security Administration.

*Classified information* means Restricted Data and Formerly Restricted Data protected against unauthorized disclosure pursuant to the Act and National Security Information that has been determined pursuant to Executive Order 12958, as amended March 25, 2003, or any predecessor or successor executive order to require protection against unauthorized disclosure and that is marked to indicate its classified status when in documentary form.

*DOE* means the United States Department of Energy, including the National Nuclear Security Administration.

*Director* means the DOE Official, or his or her designee, to whom the Secretary has assigned responsibility for enforcement of this part.

*Person* means any person as defined in section 11.s. of the Act, 42 U.S.C. 2014, and includes any affiliate or parent corporation thereof, who enters into a contract or agreement with DOE, or is a party to a contract or subcontract under a contract or agreement with DOE.

*Secretary* means the Secretary of Energy.

### § 824.4 Civil penalties.

(a) Any person who violates a classified information protection requirement of any of the following is subject to a civil penalty under this part:

(1) 10 CFR part 1016—Safeguarding of Restricted Data;

(2) 10 CFR part 1045—Nuclear Classification and Declassification; or

(3) Any other DOE regulation or rule (including any DOE order or manual enforceable against the contractor or subcontractor under a contractual provision in that contractor's or subcontractor's contract) related to the safeguarding or security of classified

information if the regulation or rule provides that violation of its provisions may result in a civil penalty pursuant to subsection a. of section 234B. of the Act.

(b) If, without violating a classified information protection requirement of any regulation or rule under paragraph (a) of this section, a person by an act or omission causes, or creates a risk of, the loss, compromise or unauthorized disclosure of classified information, the Secretary may issue a compliance order to that person requiring the person to take corrective action and notifying the person that violation of the compliance order is subject to a notice of violation and assessment of a civil penalty. If a person wishes to contest the compliance order, the person must file a notice of appeal with the Secretary within 15 days of receipt of the compliance order.

(c) The Director may propose imposition of a civil penalty for violation of a requirement of a regulation or rule under paragraph (a) of this section or a compliance order issued under paragraph (b) of this section, not to exceed \$100,000 for each violation.

(d) If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

(e) The Director may enter into a settlement, with or without conditions, of an enforcement proceeding at any time if the settlement is consistent with the objectives of DOE's classified information protection requirements.

### § 824.5 Investigations.

The Director may conduct investigations and inspections relating to the scope, nature and extent of compliance by a person with DOE security requirements specified in § 824.4(a) and (b) and take such action as the Director deems necessary and appropriate to the conduct of the investigation or inspection, including signing, issuing and serving subpoenas.

### § 824.6 Preliminary notice of violation.

(a) In order to begin a proceeding to impose a civil penalty under this part, the Director shall notify the person by

a written preliminary notice of violation sent by certified mail, return receipt requested, of:

(1) The date, facts, and nature of each act or omission constituting the alleged violation;

(2) The particular provision of the regulation, rule or compliance order involved in each alleged violation;

(3) The proposed remedy for each alleged violation, including the amount of any civil penalty proposed; and,

(4) The right of the person to submit a written reply to the Director within 30 calendar days of receipt of such preliminary notice of violation.

(b) A reply to a preliminary notice of violation must contain a statement of all relevant facts pertaining to an alleged violation. The reply must:

(1) State any facts, explanations and arguments which support a denial of the alleged violation;

(2) Demonstrate any extenuating circumstances or other reason why a proposed remedy should not be imposed or should be mitigated;

(3) Discuss the relevant authorities which support the position asserted, including rulings, regulations, interpretations, and previous decisions issued by DOE;

(4) Furnish full and complete answers to any questions set forth in the preliminary notice; and

(5) Include copies of all relevant documents.

(c) If a person fails to submit a written reply within 30 calendar days of receipt of a preliminary notice of violation:

(1) The person relinquishes any right to appeal any matter in the preliminary notice; and

(2) The preliminary notice, including any remedies therein, constitutes a final order.

(d) The Director, at the request of a person notified of an alleged violation, may extend for a reasonable period the time for submitting a reply or a hearing request letter.

**§ 824.7 Final notice of violation.**

(a) If a person submits a written reply within 30 calendar days of receipt of a preliminary notice of violation, the Director must make a final determination whether the person violated

or is continuing to violate a classified information security requirement.

(b) Based on a determination by the Director that a person has violated or is continuing to violate a classified information security requirement, the Director may issue to the person a final notice of violation that concisely states the determined violation, the amount of any civil penalty imposed, and further actions necessary by or available to the person. The final notice of violation also must state that the person has the right to submit to the Director, within 30 calendar days of the receipt of the notice, a written request for a hearing under § 824.8 or, in the alternative, to elect the procedures specified in section 234A.c.(3) of the Act, 42 U.S.C. 2282a.c.(3).

(c) The Director must send a final notice of violation by certified mail, return receipt requested, within 30 calendar days of the receipt of a reply.

(d) Subject to paragraphs (h) and (i) of this section, the effect of final notice shall be:

(1) If a final notice of violation does not contain a civil penalty, it shall be deemed a final order 15 days after the final notice is issued.

(2) If a final notice of violation contains a civil penalty, the person must submit to the Director within 30 days after the issuance of the final notice:

(i) A waiver of further proceedings;

(ii) A request for an on-the-record hearing under § 824.8; or

(iii) A notice of intent to proceed under section 234A.c.(3) of the Act, 42 U.S.C. 2282a.c.(3).

(e) If a person waives further proceedings, the final notice of violation shall be deemed a final order enforceable against the person. The person must pay the civil penalty set forth in the notice of violation within 60 days of the filing of waiver unless the Director grants additional time.

(f) If a person files a request for an on-the-record hearing, then the hearing process commences.

(g) If the person files a notice of intent to proceed under section 234A.c.(3) of the Act, 42 U.S.C. 2282a.c.(3), the Director, by order, shall assess the civil penalty set forth in the Notice of Violation.